

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 October 1981

relating to a proceeding under Article 86 of the EEC Treaty (IV.29.491 —
Bandengroothandel Frieschebrug BV/NV Nederlandsche Banden-Industrie
Michelin)

(Only the Dutch text is authentic)

(81/969/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community, and in particular Article 86
thereof,

Having regard to Council Regulation No 17 of 6
February 1962⁽¹⁾, and in particular Articles 3 and 15
thereof,

Having regard to the application submitted to the
Commission on 29 July 1977 pursuant to Article 3 of
Regulation No 17 on behalf of Bandengroothandel
Frieschebrug BV, Alkmaar, the Netherlands,
requesting the Commission to find that Article 86 of
the Treaty has been infringed,

Having regard to the decision of the Commission of
19 February 1980 to initiate a proceeding in this case,

Having heard the undertakings concerned in accor-
dance with Article 19 of Regulation No 17 and with
Commission Regulation No 99/63/EEC of 25 July
1963⁽²⁾,

Having regard to the opinion of the Advisory
Committee on Restrictive Practices and Dominant
Positions, delivered pursuant to Article 10 of Regula-
tion No 17 on 19 and 20 May 1981,

Whereas :

I

THE FACTS

1. The proceeding relates to a number of aspects of
the commercial policy pursued until and including
1980 by NV Nederlandsche Banden-Industrie
Michelin (hereinafter referred to as 'NBIM') on the
Netherlands market in new replacement tyres for
trucks and buses.

A. Relevant aspects of the tyre market

2. The tyre industry comprises the manufacture of
inner tubes and tyre casings, and the renewal of the
tread on worn tyre casings. Only tyre casings are dealt
with below.

There are different sorts of tyre, designed for different
types of vehicle, including the following :

- light tyres for cars,
- tyres for delivery vans and light commercial
vehicles,

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

- heavy tyres for trucks and buses,
- tyres for agricultural tractors, road-building and earth-moving machinery, aircraft, etc.

The difference between the types of tyre is also reflected in the price per unit, which, as far as the most usual sizes are concerned, is more than five times higher for truck and bus tyres than for car tyres.

Each type of tyre includes a wide range of differing qualities, treads and sizes. The type of tyre chosen obviously depends first and foremost on the type of vehicle to which it is to be fitted and the purpose for which the vehicle is to be used.

3. The tyre market consists of two sectors which must be distinguished clearly: the original equipment market and the replacement market. Original equipment tyres are sold by the tyre manufacturer direct to the vehicle manufacturer, without any intermediary being involved. Replacement tyres, by contrast, are sold to final consumers primarily through the intermediary of a large number of specialized dealers. On the Netherlands market, 65 to 70 % of all replacement tyres for cars and vans and 85 to 87 % of all replacement tyres for trucks and buses are sold through such dealers. They generally obtain their supplies direct from the tyre manufacturers or from the official importers.

4. Tyres for trucks and buses need not necessarily be new tyres. Provided that the carcass is in sound condition, used tyres may be given a new tread, thus practically doubling their life. In certain cases, it is possible to repeat the retreading process. Retreading is carried out not only by the manufacturers of new tyres (for example, Michelin in France is the largest retreader of commercial vehicle tyres), but also by many firms specializing in this process. Such firms buy tyre carcasses which are in sound condition, retread them on their own account and sell them, or, alternatively, they carry out retreading to order for transport firms which supply their own carcasses to the retreader. The understanding is then that the carcasses supplied by each transporter will be returned to him with a new tread.

5. The total number of replacement tyres in use by transport firms established in the Netherlands consists in roughly equal parts of new tyres and retreads. As the Commission has ascertained, this does not mean that new tyres and retreads are regarded as wholly interchangeable. Many consumers regard retreads as being less reliable and are not prepared to accept the risks which they believe the use of retreads entails.

Accordingly, transporters often refuse to use such tyres on the front or driven axle, for long-distance transport or for the transport of highly perishable goods.

The way in which transport firms regard retreads is also reflected in their price, which (even though they yield comparable mileage if properly used) is 40 % or more below the price of a new tyre. However, there are built-in factors preventing this considerable price differential from inducing the majority of transport firms to rely more heavily on retreads: the number of tyres than can be retreaded is after all a function of the number of worn tyres of good residual quality that are available and is therefore limited. Consequently, the scope for marketing retreads, e.g. under the Michelin trademark 'Remix', at an attractive price as an alternative to new tyres is subject to clear limitations.

6. Furthermore, during its investigation, the Commission found that firms calculate the cost price of a heavy-duty tyre on the basis of the purchase price, the mileage obtained from the tyre and the residual value of the tyre carcass if it is to be sold. This means in practice that, in calculating the cost price of a truck or bus tyre, several phases in its life are usually taken into account, i.e. an initial phase as a new tyre, followed by a second and sometimes a third phase as a retread. Since the price of a retread is much lower than that of a new tyre, retreading reduces the total cost price per kilometre of the tyre over its whole life. One practical consequence of this is that each transporter wishes to be sure that the carcasses used in the retreads he receives back are those of the tyres which he bought new and which, in his opinion, he used competently during the first phase of their life. He therefore regards carcasses which are in good condition as continuing to belong to him and will generally not entrust them to a tyre retreading firm unless specific note is taken of the matrix number stamped on the sidewall of the tyre. This enables him to check whether it is his own tyres which he receives back in retread form and not other tyres with possible unknown defects.

In such cases, tyre retreaders appear thus to be suppliers of skilled services who are not in any way connected with the tyre sales sector. The tyre dealer may be involved, but this is not essential; if he is involved, it is merely as an intermediary between the transporter and the tyre retread firm. In the Netherlands, more than half of all retreads are done to order for transporters. Transporters represented at the hearing testified on this point that they have their own tyres retreaded to order and do not buy retreads on the open market.

7. In carrying out their activities, therefore, tyre dealers are dependent on regular supplies of new tyres. Supplies of retreads are not a substitute, or at any rate only a very unsatisfactory substitute, for supplies of new tyres. It is essential that the dealer be able to offer his customers a sufficiently extensive range of new tyres, regardless of the quantity and variety of retreads which might be available as alternatives.

8. Geographically the replacement market may be defined as the area within which supply and demand meet in terms of retailing to final consumers. In this connection, it must be noted that EEC manufacturers carry out their activities on the various domestic markets primarily through the intermediary of subsidiaries established to look after the market concerned. While trade in tyres between the various Member States and also with a number of non-member countries must not be overlooked, it consists mainly of supplies by the manufacturers themselves between their various manufacturing and sales establishments. Various circumstances, including price differentials between markets in the Member States, have accordingly resulted in parallel imports and exports of several types of tyre (in particular Michelin tyres) from other national markets. However, such parallel imports and exports involve only relatively small quantities and are moreover too random to be regarded as significant in the present state of the market. Despite the availability of certain parallel supplies, Netherlands dealers are accordingly dependent on Michelin's Netherlands subsidiary, NBIM, for their regular supplies of Michelin tyres for resale. Furthermore, for the purposes of the trade discounts granted on the numbers of Michelin tyres sold, only the quantities purchased by the retailer through the intermediary of NBIM are taken into account. The Netherlands market would therefore appear to be the geographically relevant market in the case of this undertaking.

9. One of the facts which may be stated regarding the general structure of the tyre industry is that it is marked by horizontal concentration throughout the world. The European market is dominated by four manufacturers: the Michelin-Kleber-Colombes group, the Continental-Uniroyal group, the Dunlop-Pirelli group (recently de-merged) and the American firm Goodyear. One of the most noteworthy concentrations of recent years was the takeover of the European interests of the American company Uniroyal by the German company Continental Gummi in 1979. In the same year, Michelin withdrew the Kleber-Colombes shares which it had invested in 1973 in Semkler, a joint venture formed by the Austrian tyre manufacturer Semperit and Kleber-Colombes. As a result, the joint venture which had been established in 1973 was wound up and Semperit became an independent manufacturer once again. The activities of Kleber-

Colombes, following an unsuccessful attempt at merger with Continental-Uniroyal in 1980, were reorganized within the Michelin group.

Only three manufacturers have factories in the Netherlands, namely Michelin, Vredestein and Goodyear (on a very small scale). Of these three, Michelin is the only one which manufactures lorry tyres in the Netherlands.

10. This horizontal concentration is combined with vertical integration in the form of increasing control of sales channels by the tyre manufacturers. In the Netherlands, the tyre manufacturers Vredestein, Goodyear and Firestone and the retread company UBO have, since the early 1970s, acquired ownership or control over a number of sales outlets (30, 14, 2 and 11 sales outlets respectively). In July 1977, NBIM followed suit through its linkup with NV Actor, which had been taken over by Hardinge Investment Ltd, a company belonging to the Michelin group.

Actor, under the name 'TS Sterband', at present owns 28 sales outlets selling new tyres and retreads and, until the beginning of 1980, was itself engaged in carrying out retreading through its subsidiary Tyre-soles.

11. As regards trends on the tyre market a further fact to be noted is that the replacement market has experienced a setback following a period of rapid growth up to 1973. The resulting difficulties have obviously had their effects on the specialized trade in the form of a reduction in turnover and profit margins and increased competition.

B. The position of NBIM

12. NV Nederlandsche Banden Industrie-Michelin ('NBIM'), Amsterdam (Netherlands), is a subsidiary (99 %) of the Compagnie Financière Michelin, established in 1960 in Basle (Switzerland) which is itself a subsidiary (99 %) of the Compagnie Générale des Etablissements Michelin, Clermont-Ferrand (France).

The Michelin group is one of the major tyre manufacturers, its total turnover amounting to FF 24 000 million in 1979. On the world market, only Goodyear is larger; within the European Economic Community, Michelin holds the number one position.

13. Michelin introduced the radial tyre in 1948. It is still the world's leading manufacturer of radial tyres. The tyres manufactured by Michelin are characterized by the large-scale use of steel cord. The company was also a pioneer in this respect and is the largest manufacturer in the world. Michelin is also the largest French manufacturer of wheels for cars and trucks.

Although the basic patents for the radial tyre expired a few years ago and although manufacturing rights have been granted to other firms since 1956, Michelin still has a special degree of know-how. It has a clear lead regarding the extensive specialized investments in this area, investments which it was able to carry out thanks to its large-scale financial resources. It has continued to pursue an active policy of research and innovation. This has allowed the development of a wide range of tyres under the Michelin trade name, with the result that a highly diversified product is marketed and new categories of customers are continually being reached. The Michelin range is larger than that which other manufacturers have on offer to consumers in the Netherlands.

Several competitors have managed to catch up with Michelin to some extent. They now market a product which, in quality and cost price, is comparable with the Michelin tyre. Nevertheless, it is evident that tyre users continue to show some preference for Michelin products. There are various reasons for this, including the large lead which Michelin had built up and, as regards lorry tyres, the fact that it is only after several years' experience with tyres of a given make that consumers can make up their minds on a tyre's reliability and calculate its cost price. This obviously allows well-established makes to maintain a strong position over the long term.

14. NBIM is responsible for the manufacture and sale of Michelin tyres in the Netherlands. It has a factory for the production of van and truck tyres at 's-Hertogenbosch where 450 000 to 500 000 new tyres are manufactured each year, some of the production being for export to other countries. It employs some 1 600 persons and, in 1980, had a total turnover of Fl 455 million.

15. NBIM holds by far the largest share of the Netherlands market in new replacement tyres for trucks and buses. Table I shows that 59 to 65 % of new tyres sold in the Netherlands for trucks and buses between 1975 and 1980 carried the Michelin trade-mark.

TABLE I

Numbers of new replacement tyres for trucks and buses sold in the Netherlands

	(a) Sales (all makes)	(b) NBIM sales	(c) (b) as % of (a)
1975			
1976			
1977			
1978			
1979			
1980			

The figures in this table were provided by manufacturers and importers and take no account of parallel tyre imports, which are difficult to establish. Reliable estimates put these at several thousands, mainly Michelin tyres, which further increases the market share of this make.

The market shares of the five principal competing makes are much smaller, between 4 and 8 % only. Three of the leading competitors, which together account for 17 to 18 %, manufacture their heavy-duty tyres in other Member States. The other firms in these countries also account for a small share of the market; in all therefore, 25 to 28 % of heavy-duty tyres which compete with Michelin tyres on the Netherlands replacement market come from other Member States.

16. As shown by Table II, NBIM's share of the market in retreads grew from 6 % in 1975 to 18 % in 1979.

TABLE II

Numbers of retreads for trucks and buses sold in the Netherlands

	(a) Sales (all makes) (*)	(b) NBIM sales	(c) (b) as % of (a)
1975			
1976			
1977			
1978			
1979			

(*) Source: VACO.

Moreover NBIM acquired, at the end of 1977, the major retreading firm Tyresoles (disposed of in April 1980). This allowed Michelin to acquire a further share of some 20 % of retreads fitted to trucks in the Netherlands, with the result that virtually one third of the heavy-duty retreads sold on the Netherlands market was then controlled directly or indirectly by Michelin.

17. NBIM also holds the number one position on the Netherlands market in new replacement tyres for cars, with a market share of about one third. Its seven main competitors have market shares ranging between 5 and 13 %.

18. Like the other manufacturers, NBIM sells its tyres on the Netherlands market at prices which are published in readily available price lists. A look at the 1977/78 tyre prices of various manufacturers shows that the gross prices for Michelin tyres were comparable with the prices charged for the tyres of its main competitors. However, information obtained from tyre retailers indicates that the situation with regard to the net prices charged to dealers is different. The average total discount with NBIM grants to dealers is substantially lower than that granted by its competitors. Consequently, dealers pay some 10 to 15 % more for Michelin tyres than for tyres of other makes. This fact does not of course have any decisive significance with regard to the price of the various tyres to the final consumer or to the relative cost per kilometre.

19. NBIM operates a substantial commercial and technical service. Its representatives (some 50 in number) regularly visit all the tyre dealers and the users of truck tyres (the major users are visited about once a month). So as to be able to carry out these visits to users, NBIM asks for details on the final destination of heavy-duty tyres ordered from it by retailers. NBIM staff regularly visit the users on their own initiative, without informing the distributor and without waiting for the dealers or the users to request the visit. The main purpose of their visit is to promote the marketing and hence the sale of Michelin tyres. Otherwise they are instructed to cooperate with the trade in this respect. During their visits the representatives give technical advice, for example on the type of tyre that must be fitted, on how it must be fitted and on tyre pressure. They carry out on-the-spot technical checks of the tyres and the state of the vehicles and also take orders — bearing net price details — which they pass on to a dealer. In checking the vehicles, they are also supposed to draw up as detailed as possible an inventory of any competing makes of tyres being used.

These visits obviously, and as a matter of policy, enable the company to obtain market knowledge which rivals that of the specialized trade and which is directly geared to the manufacturer.

In addition, NBIM operates a specialized technical service consisting of some 10 persons; each user of Michelin tyres is entitled to enlist the help of this service in solving complicated technical problems.

C. The conduct in dispute

20. The pricing and discount policy pursued by NBIM with regard to tyre dealers during the years relevant for this decision was invariably characterized by the following elements:

- a basic price which is published in price lists,
- an immediate and general discount on the invoice,
- other discounts which in part are determined individually for each dealer,
- a target figure for purchases, known as the 'target', used as a basis in establishing these discounts,
- lack of written confirmation of 'targets' and discounts.

(a) *The system of discounts*

21. The system of discounts firstly comprises a fixed component, the invoice discount, i.e. a discount which is entered directly on the invoice and which the dealer therefore benefits from immediately. The system also comprises a variable component consisting of various bonuses.

22. Up to 1977, the invoice discount amounted to 15 % for truck and bus tyres; in 1978 it was increased to 22.5 % and in 1979 to 30 %. It is announced to the dealers in writing in the form of a circular at the beginning of the calendar year and is therefore common knowledge.

The circular states that further details regarding terms and conditions will be discussed during a visit by an NBIM representative. These conditions involve various forms of bonuses which are granted over and above the invoice discount and which are communicated orally to the dealers. In the case of truck tyres, the main bonus is an annual bonus which, up to 1977, ranged between 10 and 22 %. More than three quarters of NBIM's sales of heavy tyres carried an annual bonus towards the upward end of this range, within a 3 % margin of flexibility. With the sharp increases in the invoice discount, the annual bonus was reduced to 1 to 5 % in 1978 and to 0 to 2 % in 1979. Up to 1977, as an advance on the annual bonus, dealers received a monthly 'advance bonus', varying from 5 to 18 % depending on the dealer concerned. In general, the advance bonus was some 4 to 6 % lower than the annual bonus. The advance bonus was very important for the trade in view of the low level of the invoice discount up to 1979. In 1978 an automatic

monthly bonus of 3 to 10 % was introduced instead of the advance bonus, but was discontinued in 1979 when NBIM introduced a four-monthly bonus of 0 to 3 % in addition to the annual bonus. Throughout the period, there was also a 2 % cash discount, i.e. for payment made in accordance with the term agreed.

Up to 1979, all the bonuses and the cash discount were calculated in respect of the invoice price (i.e. on the basis of the list price minus the value of the invoice discount). From 1979 onwards, the bonuses were calculated solely on the basis of the list price, while the cash discount continued to be calculated on the basis of the invoice price.

The amount of the total discount which dealers may obtain from NBIM has increased somewhat since 1975. The table below sets out the changes in the discounts and bonuses.

TABLE III
Discount system for truck tyres for the period 1975 to 1980

	<i>(in % of list price)</i>					
	1975	1976	1977	1978	1979	1980
Invoice discount	15	15	15	22.5	30	30
Monthly bonus	—	—	—	3 to 10 (*)	—	—
Four-monthly bonus	—	—	—	—	0 to 3	0 to 3
Annual bonus	10 to 22 (*)	10 to 22 (*)	10 to 22 (*)	1 to 5 (*)	0 to 2	0 to 2
Cash discount	2 (*)	2 (*)	2 (*)	2 (*)	2 (*)	2 (*)
Total (maximum)	35.4	35.4	35.4	35.675	36.2	36.2

(*) In percentage of amount invoiced.

It should be noted that during the same period the invoice discount automatically granted by the other tyre manufacturers amounted to 40 to 60 %, sometimes supplemented at the end of the year by an annual bonus amounting to a few per cent.

This annual rebate was normally known beforehand and was not used as an individualized sales target. Thus, it did not have in any way the character of a 'fidelity' rebate. This discount policy, pursued by all the other manufacturers, was in strong contrast to the system used by NBIM described below.

23. The level of the bonuses granted by NBIM was established individually for each dealer in accordance with the efforts he has made in distributing Michelin tyres, this being measured in terms of an increase (or, in a difficult economic situation, the maintenance) of his purchases from NBIM. The company works on the basis of a number of criteria, including on the one

hand the estimated sales potential of the relevant dealer and on the other hand NBIM's share in his sales. This procedure may be seen most clearly from the customer files for 1975 to 1976, in which the proportion of Michelin tyres in the total tyre sales of the tyre dealer is calculated (NBIM then called this the 'temperature Michelin'). Later, Michelin's percentage of total new tyre purchases still had to be calculated, but the term 'temperature' was avoided.

24. Payment of the annual bonus and of the four-monthly bonus introduced in 1979 is dependent on a 'target' — negotiated at the start of each year — being reached in the number of Michelin tyres purchased. This may be seen clearly from the summaries of dealers' terms and from the customer files submitted to the Commission and from the correspondence exchanged with a number of tyre dealers. The Commission has also found that on a number of occasions payment of the advance bonus and of the fixed monthly bonus was based on expected annual sales (laid down in the 'target'), of a given number of tyres.

If the relevant dealer's sales were not on course to meet the target, NBIM reserved the right to alter the bonus terms in the interim and/or to request repayment of advances already received. To what extent this happened, only NBIM can say. It was also possible for the bonus to be increased if the dealer exceeded his target. In general, the meeting between the NBIM representative and the dealer to discuss the target and the terms plays a major role here. It is the representative's job to point out to the dealer, during the last few months of the year, the benefits associated with a final order in that year and what it can cost him if that final order is not placed. It is sometimes pointed out to the dealer that, after the first six months have elapsed, he can, for instance, receive the amount of the annual bonus due for the first six months immediately if he has achieved half the annual 'target' by the end of June. The extra orders which in many cases are necessary for this purpose can then be financed out of the amount of the credit note to be received.

Until 1978, a graduated series of three 'targets' was established in most cases, with corresponding bonus figures in similar graduated order.

In general, the 'targets' were fixed in such a way that the highest 'target' set for a given year was higher than the amount of purchases made in the previous year, while the corresponding bonus figure did not in most cases show any increase. Pressure was thus put on the dealer to endeavour to sell more Michelin tyres every year so as to obtain at least the same annual bonus.

In 1978 this system was changed somewhat and only one 'target' set. In addition, a refinement was introduced in 1979 in the form of a four-monthly target, with a corresponding four-monthly bonus. This four-monthly 'target' amounted to roughly one third of the annual 'target'. The annual target in these two years was once again consistently higher than the number of purchases made in the previous year.

25. Comparison of the customer files shows that dealers purchasing very different quantities often receive the same bonuses and vice versa. It may also be seen that NBIM itself does not apply stringently the conditions for receiving the bonuses. It reserves the right to grant a bonus set for a larger purchase than that which was actually made. On the other hand, the Commission has learned of cases in which the bonus was unilaterally lowered when the 'target' was not reached. The implementation of the bonus schemes was thus flexible, but entirely at the discretion of NBIM.

A table, drawn up by NBIM at the Commission's request, detailing the numbers of tyres sold per bonus percentage in 1976 (a year prior to submission of the complaint) shows clearly the *ad hoc* manner in which the bonuses were established.

26. A discount system comparable to that pursued in the case of heavy tyres is also applied to the other categories of tyres which NBIM sells to dealers.

27. In addition to the normal discounts and bonuses forming part of the discount system described above, NBIM occasionally grants extra bonuses or discounts, usually in connection with a specific campaign. In 1977, for example, when NBIM was unable to meet the demand for heavy tyres on the European market as a result of large-scale demand elsewhere, it made use of this situation to grant dealers a once-only extra annual bonus of 0.5 % on their purchases of heavy and light tyres on condition that a special 'target' was achieved in purchases of light tyres. The actual purpose of the bonus was therefore to stimulate sales of light tyres. If the 'target' was not achieved the extra bonus was generally not paid.

(b) *Absence of written confirmation*

28. The criteria for determining the bonuses are not known to the individual dealer. The models used for determining the level of the annual bonuses (these models have in fact been discontinued since 1978) were intended only for internal use and were designed to serve only as guidelines for the representatives.

Not only were the dealers not informed about the discount system, up to 1980 they also received only very sporadic written confirmation from NBIM of the oral 'agreement' between Michelin's representative and the dealer regarding the bonuses. The Commission found that this lack of written confirmation regularly gave rise to difficulties of interpretation regarding the bonus percentage payable at the end of the year.

This situation was worsened by the fact that the elements taken into account in calculating the bonuses were such that it was very difficult for the dealer (and practically impossible for the smaller dealer) to know for certain how much was being earned on sales of Michelin tyres in a given year. Frequently, the smaller dealers did not discover what their final bonuses amounted to until they had opened the envelopes handed to them at the end of the year by a NBIM representative.

The Commission found that many dealers hesitated to complain about this lack of written confirmation, knowing that NBIM, because of its regular inspections at the premises of final consumers, could easily switch to another, more cooperative, dealer, or, following the takeover of Actor, to one of the 28 establishments of TS-Sterband.

II

APPLICABILITY OF ARTICLE 86

29. Under Article 86 of the EEC Treaty, any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it is prohibited as incompatible with the common market in so far as it may affect trade between Member States.

30. NBIM is an undertaking within the meaning of Article 86 of the Treaty.

A. The relevant market

31. The relevant product market for the purposes of this Decision, defined on the basis of the product, is the market in new replacement tyres for trucks, buses and similar vehicles. Such heavy tyres differ clearly in their technical characteristics, purpose and price from other categories of tyres. Accordingly, tyre producers and retailers always make a clear distinction in their gross prices and discount terms between car tyres and truck tyres. Hereinafter the relevant market will be examined at the level of the retailer.

32. The relevant market does not include retreads. As shown above (points 5 and 6), retreads cannot be regarded, either in qualitative or in quantitative terms, as adequate substitutes for new tyres. The open market in retreads is restricted, since most of the retreading in the Netherlands is carried out to the direct orders of transport firms for their own use.

If a tyre is retreaded once or several times the life of the new tyre is usually only prolonged within the firm which originally purchased it. The price charged for retreads available on the open market also shows that, in the view of consumers, such tyres constitute a distinct and separate product which belong to an equally distinct and separate sub-market. In order to carry on their business, dealers in truck and bus tyres must therefore have a varied range of new tyres on offer. Retreads can only supplement the range of new tyres which they have on offer and cannot replace such tyres.

33. NBIM argues that, in view of the differences in the specific nature of the requirements which the various sorts of types of tyre have to meet, several sub-markets must be distinguished within the truck and bus tyre category. This position cannot be accepted since this case does not concern the relationship between NBIM and the final consumer. Specific tyre types and sizes are of no importance to an analysis of the possibility of obtaining substitute products at dealer level or in the relationship between NBIM and dealers. The price, discount and other terms of sales applied by all tyre manufacturers in their dealings with dealers show that such a detailed breakdown is irrelevant here. NBIM also takes this clearly into account when it defines the 'targets' in terms of numbers of 'truck and bus tyres', without any further specification.

34. The relevant geographical market is the Netherlands market, which forms a substantial part of the common market. NBIM's operations are confined to this area, and it is here that the practices at issue took place. Netherlands tyre dealers cannot obtain sufficiently reliable and continuous supplies of Michelin tyres outside the Netherlands. Indeed, if they wish to obtain Michelin tyres in other Community countries, they must do so through other retailers and cannot obtain the tyres from the undertakings belonging to the Michelin group.

B. The dominant position

35. NBIM enjoys such complete freedom of action *vis-à-vis* its competitors and its customers in the relevant product market that it can, using means at its disposal only, prevent effective competition in a substantial part of the common market and thus adversely affect trade between Member States.

NBIM's dominant position is sufficiently apparent from its large market share compared with the market shares of its major competitors. The figures given above (point 15) show that, in the period 1975 to 1980, Michelin tyres had a 57 to 65 % share of the market for new truck and bus tyres. During the same period, the market shares of its major competitors ranged between some 4 and 8 % only. Consequently, Michelin heavy tyres clearly occupy a dominant position on the market. This means that a dealer who does not stock Michelin tyres suffers a loss of commercial prestige and that the survival of his business may be endangered.

Any manufacturer selling a product with such a strong market position has the ability to impose conditions on dealers that do not necessarily correspond to those which would apply on a market where competition is operating effectively. As is often the case in situations

such as that being examined here, the finding of a dominant position is supported *inter alia* by the evidence relating to the abuse of that position.

36. In assessing NBIM's dominant position, account must also be taken of the fact that the company has a much larger number of representatives — dealing above all with commercial matters, but also providing technical support — than its competitors. This enables NBIM to maintain its market position to optimum effect in the knowledge that its competitors are not able to make similar intensive efforts with final consumers.

Lastly, NBIM's dominant position is apparent from the fact that, compared with the other producers, it markets a very wide range of tyre types. In the case of many (less common) types and sizes, the only tyres available to dealers are Michelin tyres, and this gives NBIM a strong position with dealers in the case of the most common types and sizes too.

C. The abuse

37. NBIM's commercial conduct constitutes an abuse of a dominant position. It restricts dealers' freedom of choice and results in inequality of treatment as between tyre dealers. The access of other tyre producers to the market is also restricted.

Its conduct has the following characteristics:

- (a) the application of a discount system that is based on bonuses established individually and selectively for each dealer and linked to the attainment of the individual sales 'targets' established by NBIM and agreed with dealer at the start of each year;
- (b) the fact that until 1980 the 'targets' and bonus percentages applicable for each dealer were communicated and confirmed not in writing, but only orally;
- (c) in 1977, the bonuses on heavy tyres were linked to purchases of light tyres.

(a) The discount system

38. The discount system is clearly aimed at tying the dealers closely to NBIM and thus making it difficult for other producers to gain a foothold in the market. The various bonuses are related to a sales 'target' which is established at the beginning of each annual sales campaign for each dealer, i.e. on an individual and selective basis. Even in periods when the

economic situation is poor, the 'targets' are usually set at a level which is higher than the purchases made in the previous year. As a result, great pressure is put on the dealers to outdo themselves each year in their sales of Michelin tyres. The pressure on the dealer to buy Michelin tyres increases during the year and especially towards the end as he will try to achieve his sales 'target' and obtain the highest possible bonus.

This pressure is increased still further through the regular visits made by NBIM representatives, whose job it is to carry out systematic and direct checks on the spot that the 'targets' have been reached and to establish NBIM's resulting position in relation to its competitors (the so-called 'température Michelin'). NBIM defends itself by arguing that, due to a lack of official statistics in the Netherlands concerning sales of the various makes of tyre, it is obliged to estimate such sales through its customers, but this argument cannot be upheld. The information gathered by the Commission shows that these so-called 'estimates' are based on what amounts in fact to a survey, that is to say on questions put directly and individually to the dealers by NBIM representatives.

The fact that use of the term 'température Michelin' was discontinued in 1977 is not relevant, since the practice (which is indeed mandatory for the representatives) of expressing as a percentage the share of Michelin tyres in the relevant dealer's total sales is still observed today, and has the same effect.

39. The resultant organizational links binding the independent trade to NBIM are further strengthened by the structure of the discount system. The table given in point 22 and the related explanatory note show that, up to 1979, NBIM's client dealers, in contrast to those of suppliers of other tyres, could collect only a limited proportion of the total discount accorded to them directly in the form of an invoice discount. The advance bonus, (the remainder of) the annual bonus, the automatic monthly bonus and the four-monthly bonus would certainly follow in due course, assuming that business relations continued on a normal footing, but meanwhile were regularly used by NBIM as a means of pressure (see point 24). Admittedly, the table suggests that in 1978 and 1979 there was a progressive simplification of the system, with NBIM's freedom of action becoming more limited. However, this is true only in respect of the monthly advance bonus, which of course lost its *raison d'être* with the increase in the direct invoice discount.

As far as the other bonuses are concerned, the changes made in 1978 and 1979 were basically concerned only with form. As pointed out in point 22, the range of bonuses applied by NBIM in its discount system was far more limited than the percentages given in fact suggest. Moreover, the discount system was strengthened in 1979 by the introduction of a four-monthly bonus linked to attainment of a sales 'target'.

40. This system applied by an undertaking in a dominant position, a system which has the effect of tying, with respect to organizational and commercial matters, independent dealers closely to the undertaking, constitutes an abuse within the meaning of Article 86, since it is incompatible with the objective of Article 3 (f) of the Treaty, namely that competition in the common market should not be distorted.

41. Furthermore, NBIM's policy of granting selective bonuses results in discrimination within the terms of Article 86 (c). The Commission has found that different bonuses are granted to dealers whose positions are comparable. The discounts received by the retailers do not in any way correspond to services that, from an economic point of view, are objectively provided and ascertainable. The criteria applied are clearly subjective and essentially based on the loyalty which has been shown to NBIM. Through its policy of individually-determined discounts, NBIM applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at an unjustified competitive disadvantage or advantage. In any event, this policy gives NBIM the opportunity of practising discrimination.

42. In its reply to the Commission's statement of objections, NBIM denied that the discount system constitutes an abuse within the meaning of Article 86, arguing primarily that the discounts and the 'targets' are a variant of quantity discounts.

NBIM's discounts are indeed linked to the attainment of a sales target clearly defined in numbers and/or guilders. To that extent, the discount system comprises elements which appear to be quantitative in nature. However, the Commission has established that comparable amounts purchased almost never result in the same or comparable discounts being granted to the dealers. The bonuses are quantity discounts only within the strictly individual context of each purchaser. The bonus rates are not established on the basis of objective criteria applicable to all purchasers. They are NBIM's expression of its individual assessment of a given dealer's performance and of its expectations regarding his future performance. These bonuses are set and calculated in such a way that in

advance NBIM gains a hold upon the dealer in the efforts he makes to promote Michelin tyres, clearly detrimental to the efforts he puts in for other makes. The opportunity of discriminating between dealers which NBIM gains discourages them from obtaining supplies from other manufacturers at the expense of their purchases from NBIM. Accordingly, the discounts are not comparable to the normal quantity discounts which are customary in the trade and which constitute a reward calculated subsequently according to objective criteria fixed in advance and known to all.

43. NBIM also points out that, in the period 1975 to 1978, the difference of discount between a small dealer and a large dealer amounted to no more than 2.55 %. This difference is described as being marginal and as having a negligible effect on competition. Without going into a detailed analysis of this percentage, the Commission wishes to state that it does not share this view. In the first place, it is well known in the tyre trade that each percentage point more or less can play a crucial role for the dealer's profitability, particularly where the tyres involved are subject to such competition among dealers as Michelin tyres are. It is therefore difficult to see why NBIM should surround its discount policy with so much secrecy if the margin of manoeuvre held no significance for its sales policy — unless it must be assumed that the lack of transparency is intended to mislead the trade into thinking that the margin is much greater. Furthermore, the Commission has found that, before various rounds of visits, NBIM representatives were instructed to make it clear to the dealers how much it would cost them if they did not place a final order before the end of the year, half-year or quarter. Such instructions would be pointless if the dealers were indifferent to the amount involved, even though it is on occasion barely 1 % involved. Lastly, in explaining the 0.5 % extra annual bonus referred to above in point 27, NBIM stated that its intention was to give the dealers the opportunity of making up for the loss in income resulting from the temporary shortage of truck tyres. NBIM itself thus confirms the fact that fractions of one per cent are commercially very relevant, and 2.55 % all the more so. Furthermore, this fact relates not only to the 'penalty for not reaching the target set', but also to the discrimination as between dealers as a result of the granting of dissimilar bonuses for comparable transactions.

44. NBIM's argument that the discount system is permissible because it allows better planning of the supplier's activities is equally unacceptable. The importance of such planning, even for a firm in a dominant position, cannot override natural market uncertainty.

But the outcome of the system applied by NBIM is that to a great extent tyre dealers are deterred from taking advantage of offers made by competitors during the course of the year. In this respect, the bonuses must be regarded as a variant of loyalty rebates. Though they are not linked to an exclusive purchasing requirement involving all or a very substantial part of the purchasers' requirements, NBIM is able through the discount system to ensure that it obtains a maximum percentage (varying from customer to customer and carefully checked by NBIM) of the purchases made by dealers.

45. NBIM also argues that, in establishing bonuses, it takes account of the extent of the efforts made by the dealer in marketing the relevant products. It claims that it is not guilty of discrimination within the meaning of Article 86 (c) of the EEC Treaty, since account is taken only of the individual position of each dealer. As stated above, it is of course permissible, in the light of the competition rules laid down in the EEC Treaty, for an undertaking granting discounts, bonuses, etc. to take account of the services which the retailer performs for the undertaking in selling its products. A particular example might be the customer service which the retailer may provide for final consumers and which the manufacturer himself would otherwise have to provide. So as to avoid arbitrariness and allow checks to be carried out, the conditions which must be met to qualify for the bonus must be defined objectively and made known to the purchasers. The NBIM system must be checked against such criteria if it is to be established that it is not discriminatory. Since the key element in NBIM's discount system is not so much the services which the dealer objectively performs for the undertaking in selling Michelin tyres, but rather NBIM's subjective assessment of the dealer's efforts in marketing Michelin tyres, the above criteria cannot be applied. As a result of this approach, dealers who objectively are in similar circumstances are inevitably treated in dissimilar ways. In view of the essentially oral procedure followed in establishing the bonuses, their complicated nature, the fact that the trade is not informed of the methods used by NBIM and the resulting lack of any means of carrying out checks, it is illusory to suppose that discriminatory situations could be avoided.

(b) *The absence of written notification of 'targets' and bonuses*

46. The anti-competitive and discriminatory effects of the discount system are further reinforced by the absence of written notification and confirmation

(usually given in writing) of the different targets and bonuses applicable for each dealer.

47. Until 1980, NBIM representatives gave purely oral notification of the 'targets' and associated rebates or 'bonuses' to each dealer personally at the beginning of each year. Written confirmation of this important information was provided by NBIM only in very exceptional circumstances and never as a matter of course. This practice accordingly meant that difficulties regularly arose and that the dealers were heavily dependent on NBIM's unilateral interpretation. The uncertainty resulting from the lack of written confirmation naturally operates to the sole benefit of NBIM given its market position and the relative economic weakness of the individual dealers.

The Commission does not of course have any objections of principle to the purely oral notification of terms of sale. However, if this method is applied by an undertaking in a dominant position and if the terms which it applies are particularly complex in nature and — as demonstrated herein — lend themselves easily to misunderstandings, this combination of factors amounts to abusive conduct. In view of the complexity of the discount system, the failure to provide written confirmation of bonuses and 'targets' made it especially difficult for dealers to make a precise comparison between the net purchase price offered by the major producer and the price offered by other producers. As an element in the commercial policy of an undertaking in a dominant position, this lack of written confirmation increases the undertaking's freedom of action with regard to its direct customers and reduces any inclination on the part of dealers to obtain their supplies from competing producers. The result is to increase the anti-competitive effects of the discount system.

(c) *Combined effect of (a) and (b)*

48. The aim of NBIM's policy is clearly to bind tyre dealers to NBIM as closely as possible. The basis for achieving this is the discount system. Dealers are also aware that the frequent contacts between the representatives and tyre users give NBIM the possibility of influencing the consumer's choice of dealer. This means that the dealers will in general be all the more inclined to take account of NBIM's wishes.

This discount system is of such a nature that it can only be practised by an enterprise in a dominant position. Dealers would never accept this system being imposed by other manufacturers. Michelin's competitors do not therefore use a similar system and are in no position to engage in such practices.

49. Tying purchases to a supplier occupying a dominant position, as is the intention of NBIM's commercial policy, constitutes an abuse within the meaning of Article 86. NBIM's conduct 'is such as to influence the structure of a market where, as a result of the very presence of the undertaking (in a dominant position), the degree of competition is weakened' and, 'through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition' ⁽¹⁾.

The behaviour at issue distorts competition between tyre producers. Its aim is to restrict the inclination of dealers to obtain their supplies from competing manufacturers. Access to the Netherlands market for NBIM's competitors is therefore impeded to an extent which would not be possible under normal market conditions.

(d) *Extra bonus for light and heavy tyres in 1977*

50. NBIM introduced an extra 0.5 % bonus for 1977 for light tyres and heavy tyres and made it conditional on a set 'target' being reached in respect of purchases of light Michelin tyres. This practice also constitutes an abuse within the meaning of Article 86, since the discounts for the purchase of heavy tyres are dependent on a certain level being achieved in light tyres. Since light and heavy tyres belong to quite different markets, it is in principle not acceptable to make the granting of an extra bonus for purchases of heavy tyres subject to the conditions that a given quantity of light tyres is purchased, the relevant quantity being in many cases higher than that achieved the previous year and, in some cases, actually higher than the maximum annual 'target'. In imposing this link between the two sorts of tyres, NBIM made use of its dominant position on one market with the sole aim of strengthening still further its already considerable position on another market. Indeed, the aim and affect of this practice was to spur the dealers to achieve the 'target' set for purchases of light tyres so as to avoid financial penalties with regard to the sale of heavy tyres. The argument adduced by NBIM, namely that the dealers had to be compensated for the disadvantage they suffered as a result of a temporary shortage of lorry tyres, cannot be upheld. Such compensation could have been achieved by other means.

D. Effect on trade between Member States

51. The discount system applied by NBIM may affect trade between Member States, since, by estab-

lishing strong links between the dominant supplier and the dealers, it restricts the dealers' scope in making their purchases. NBIM's entire system is aimed at improving the dealers' performance in its own favour and thus at preventing other manufacturers from obtaining orders. Many of these manufacturers (see point 15) are established in the common market and have large plants which produce heavy tyres for sale on the Netherlands market. Their chances of penetrating the Netherlands market are diminished since, on account of the links established between manufacturers and dealers under the NBIM system, NBIM's market share is roughly fixed, and in consequence other manufacturers' penetration of the Netherlands market cannot exceed a small percentage. The conduct on the part of NBIM which is at issue and its consequent maintenance of its market share is accordingly liable to restrict freedom of trade between Member States in a way that may harm the achievement of the objective of establishing a single market between the Member States, in particular by changing the structure of competition within the common market.

The unfavourable effects of the abusive discount system on trade between Member States is appreciable. The evidence shows that even quite small rebates were considered significant by the dealers. The application of NBIM's discount system and its relation to the attainment of a sales target were uncertain. As a result, the dealers were faced with an invidious choice between making sales efforts for the other manufacturers or for Michelin and it was only natural for the dealers to try to increase their Michelin sales — inevitably at the expense of the other manufacturers because the uncertain and individualized bonus could well turn out to be better than the (known) rebate available from other manufacturers. In this way, the task of those other manufacturers, trying to sell into the Netherlands from other Community countries, was made noticeably more difficult by the action of the dominant undertaking.

52. By making the granting of an extra annual bonus for heavy and light tyres dependent on a specific 'target' in sales of light tyres being reached, NBIM made use of its dominant position on the market in new truck and bus tyres to improve its position on the market in car tyres. This practice was potentially disadvantageous to competitors as regards their scope for selling light tyres. The manufacturers of the car tyres sold on the Netherlands market are indeed also established in the common market and the light tyres sold on this market — apart from a relatively small number produced in the Netherlands — are produced by manufacturers established in other Member States. During a certain period the conduct at issue impeded their sales of light tyres in the Netherlands and could have affected trade between Member States.

⁽¹⁾ Judgment of the Court of Justice of 13 February 1979, Case 85/76 Hoffmann-La Roche v. the Commission (1979) ECR 461, 541.

E. Conclusion

53. On the basis of the considerations set out above, the Commission considers that during the period 1975 to 1980 NBIM infringed Article 86 of the Treaty establishing the European Economic Community on the market in new replacement tyres for trucks, buses and the like by:

- (a) tying tyre dealers in the Netherlands to itself through the granting of selective discounts on an individual basis conditional upon sales 'targets' and discount percentages, which were not clearly confirmed in writing, and by applying to them dissimilar conditions in respect of equivalent transactions, and
- (b) granting an extra annual bonus in 1977 on purchases of tyres for trucks, buses and the like and on purchases of car tyres, which was conditional upon attainment of a 'target' in respect of car tyre purchases.

54. By letter dated 23 March 1981 NBIM informed the Commission that it had amended its discount system with effect from 1 January 1981, so that discount percentages were henceforth linked to given sales figures without reference being made to 'individual' targets. NBIM maintains that its original discount system did not run counter to Article 86 of the Treaty.

The Commission reserves the right to check whether this new system is compatible with the Treaty. In doing so, the Commission will start from the principle that any discount system applied by NBIM to promote the sales of its new tyres for trucks, buses and the like must be designed in such a way that, with the exception of short-term measures, no discount should be granted unless directly linked to a genuine reduction in the manufacturer's costs. The compensation paid to Michelin tyre dealers must be commensurate with the tasks they perform and the services they actually provide, which reduce the manufacturer's burden. In addition, the system of discounts and bonuses agreed upon must be clearly confirmed to each dealer when the sales contract is presented and concluded.

III

Applicability of Article 15 (2) of Regulation No 17

55. Article 15 (2) of Regulation No 17 provides that, where undertakings intentionally or negligently infringe Article 86 of the Treaty, the Commission may impose fines of from 1 000 to 1 000 000 units of

account, or a sum in excess thereof but not exceeding 10 % of the turnover of the relevant undertaking in the preceding business year. In fixing the amount of the fine, regard must be had both to the gravity and to the duration of the infringement.

It is necessary to impose a fine upon NBIM.

56. The Commission has come to the conclusion that NBIM has, at least negligently, infringed Article 86 of the EEC Treaty. NBIM has pursued a commercial policy the aim and effect of which is, by means of illicit measures, to bind all its dealers to itself as closely as possible. Its policy also discriminates between the dealers.

As NBIM is no doubt aware, it has the ability, as an undertaking in a dominant position, to impede the access of other makes of heavy-duty tyres to the Netherlands market and its discount system in particular does in fact impede such access.

It may reasonably be assumed that, as an undertaking in a dominant position on the Netherlands market in new replacement tyres for trucks and buses, NBIM realizes that it is infringing Article 86 of the EEC Treaty through the practices described above. Moreover, the Decisions adopted by the Commission and the judgments given by the Court of Justice have since 1973 made it clear that a discount system under which, through financial benefits, an undertaking in a dominant position attempts to prevent supplies being obtained from competitors is in conflict with Article 86. NBIM must be aware that the system it applies, a system which may be regarded as a variant of a loyalty rebate, has in principle the same restricting effects on competition as a loyalty rebate involving an obligation on the purchaser to obtain his supplies exclusively or principally from the undertaking in a dominant position. NBIM must also have been aware of the discriminatory effects of its discount policy. It must be borne in mind here that NBIM forms part of a concern occupying a position on the European market such that it may be expected of the undertaking that it will follow developments in European law attentively and gear its policy to them.

57. The Commission also considers that NBIM has intentionally, or at any rate negligently, infringed Article 86 of the Treaty by making the grant of an extra annual bonus in 1977 for purchases of heavy and light tyres dependent on a 'target' being reached for purchase of light tyres. This scheme was obviously intended to press dealers into reaching the 'target' set for car tyres and thus to increase or at least maintain the share of Michelin tyres on that market. NBIM was aware, or at any rate should have been aware, that it was thereby linking two completely separate markets

and that it was using its dominant position on the heavy tyre market as a means of strengthening its position on the light tyre market, a practice which runs counter to Article 86.

58. With respect to the duration of the infringements, it may be noted that, as regards the infringement referred to in point 53 (a), the Commission has taken only the period 1975 to 1980 into account. Although it is possible that, even before 1975, NBIM's commercial policy was aimed at tying dealers to NBIM, it is only from that year onwards that the Commission has conclusive evidence of the nature of NBIM's commercial policy. Changes were admittedly made to the discount system in 1978 and 1979, but the principles — a system of selective discounts, fixed from year to year and conditional upon sales 'targets' being achieved — have remained the same.

59. The infringement referred to in point 53 (b) relates to purchases made from NBIM in 1977. The duration of that infringement must therefore be put at one year.

60. In assessing the gravity of the infringements, account must be taken first and foremost of the fact that the disputed discount system is aimed at tying tyre dealers in the Netherlands to NBIM. Independent dealers are forced into a position in which they cannot be said to be really free in their decision-making regarding purchasing.

Account must also be taken of the fact that the selectivity of the discount system results in discrimination between dealers. Certain dealers are treated more favourably than others, although objectively they are in the same position. Competition between them is thereby artificially influenced and NBIM's dominant position accordingly strengthened by measures which do not depend on provision of services by NBIM. This commercial policy pursued by NBIM has over a long period significantly distorted competition on the Netherlands market, both between tyre producers and between tyre dealers. The infringement should therefore be regarded as serious.

61. On the other hand, account should be taken, in NBIM's favour, of the changes made to the discount system in 1978 and 1979, which, although maintaining the fundamental features of the system, are somewhat more advantageous to the dealers.

It must also be noted that NBIM has in recent years relaxed its policy of not confirming the discounts and

'targets'. Since 1980, on request, dealers have received from NBIM written confirmation of the discounts and purchase 'targets' 'agreed' at the beginning of the year.

62. The Commission also regards as a serious infringement the fact that the extra annual bonus for purchases of heavy and light tyres was conditional upon an annual 'target' being reached in purchases of light tyres. Unable to meet the demand for tyres in respect of which it occupies a dominant position, NBIM tried in this way to stimulate its sales of a different category of tyres in which its position is not so strong. Although the 0.5 % figure seems small, it amounts to a not inconsiderable amount in money terms for the dealers, so that this extra annual bonus was certainly attractive for them. Indeed, the scheme would otherwise not have been introduced by NBIM.

63. In the light of the above considerations, the Commission considers that a fine of 680 000 ECU should be imposed in respect of the two infringements established.

In fixing the amount of the fine the Commission has decided to take into account NBIM's total turnover, as well as the gravity of the infringement in issue and the intensity with which the discount system was applied to the dealers,

HAS ADOPTED THIS DECISION :

Article 1

It is hereby declared that during the period between 1975 and 1980 NV Nederlandsche Banden-Industrie Michelin infringed Article 86 of the Treaty establishing the European Economic Community by :

- (a) tying tyre dealers in the Netherlands to itself through the granting of selective discounts on an individual basis conditional upon sales 'targets' and discount percentages, which were not clearly confirmed in writing, and by applying to them dissimilar conditions in respect of equivalent transactions ; and
- (b) granting an extra annual bonus in 1977 on purchases of tyres for trucks, buses and the like and on purchases of car tyres, which was conditional upon attainment of a 'target' in respect of car tyre purchases.

Article 2

A fine of 680 000 ECU or 1 833 184.80 guilders is hereby imposed on NV Nederlandsche Banden-Industrie Michelin.

This sum shall be paid in guilders, within three months of notification of this Decision, to the account of the Commission of the European Communities: No 41.60.95.518, with the Amro-Bank, Rembrandtplein 17, NL-1 000 Amsterdam.

Article 3

This Decision shall be enforceable in accordance with the provisions of Article 192 of the Treaty establishing the European Economic Community.

Article 4

This Decision is addressed to:

NV Nederlandsche Banden-Industrie Michelin,
De Boelelaan 30,
PB 7163,
NL-1007 JD Amsterdam.

Done at Brussels, 7 October 1981.

For the Commission

Frans ANDRIESEN

Member of the Commission
